IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7223 of 1991

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ELECTRICITY BOARD

Versus

NALIN PREMSHANKER RAWAL

Appearance:

1. Special Civil Application No. 7223 of 1991

MR MD PANDYA for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 27/08/2004

ORAL JUDGEMENT

The challenge in this petition, only under

Article 227 of the Constitution of India, is against the award of the Labour Court, Rajkot, recorded in LCR No.1519 of 1985 passed on 24.4.1990, whereby, the petitioner is directed to reinstate the respondent workman, by quashing the order of retrenchment or termination, dated, 01.5.1985, at the instance of the petitioner- Gujarat Electricity Board (G E B for short) and contending, mainly, that the Labour Court has committed serious error in passing the impugned award.

2. Learned advocates appearing for the parties are heard. The record is examined. This Court has also seriously considered the factual profile and the circumstances, the text, the texture and the content and the colour of the impugned award.

3. It is noticed from the record that this Court, upon the statement of the learned advocate, Mr.Pandya to the effect that the matter has been settled on the terms and conditions, as given by the learned advocate for the respondent workman, passed the order for final disposal on 10.9.1999.

4. Thereafter, Miscellaneous Civil Application No.510 of 1991 came to be filed, with a request to recall the order of this Court, dated, 10.9.1999 on the ground that the settlement, as stated had not been agreed upon and the dispute was not finally resolved. It is in this context, this Court, after consideration of the merits of the said application, and hearing the advocates and considering the facts and circumstances of the case, allowed the restoration application, on 23.4.2001. That is how the original petition, though disposed of, came to be revived to its original number.

5. The petition is very old and it was, time and again, notified for final hearing. It is spelt out from the record that in this petition of 1991, covering and involving the industrial dispute of a poor workman with regard to his employment, who was retrenched or terminated, on 14.12.1985, and on being questioned by and in a reference under Section 10(1) of the Industrial Disputes Act, 1947 (I D Act), the dispute came to be resolved and adjudicated upon, in a reference in favour of the respondent workman in the form of impugned award.

6. It is, really, a pitty, that the industrial dispute, pertaining to the rights of the poor workman against the mighty employer, like the Gujarat Electricity Board, has been dragged on, in the legal conduit pipe for more than 18 years, when, one in all is concerned, that

delay has affected the administration of law and justice, and it also perturbed and disturbed, in controlling the docket explosion. Such an unduly long delay for a case of a poor labourer, under the I D Act, which is designed and devised in pre independence era for expeditious inexpensive, preferably by amicable settlement and if not possible, then , by, judicial adjudication. So that the beneficiaries of such welfare legislations for whom, otherwise the traditional system of law and justice virtually, has become inaccessible and unaffordable so that poor and illiterate could get quick justice for the redressal of his dispute or grievance with regard to the employment under the I.D.Act. The facts of this case in view of the long life span of dispute, one would be unable to resist temptation of voicing " What a travesty of justice?" This manner detour is felt to be of unavoidable, as the factual profile including the so-called settlement and the disposal of the main petition, once upon the statement of learned advocate Mr.Pandya, and thereafter, revival for it and the unduly long journey of resolution of dispute process has shocked the conscience of the Court.

7. By as it may, with a view to appreciating the merits of this petition, at the instance of the G E B, and opposition raised on behalf of the respondent workman, let there be a skeleton projection of catalogue of events, dates along with the factual profile.

8. The respondent workman was engaged and started working with the petitioner Board, as an Operator with effect, from 22.12.1981, who was unceremoniously retrenched or discharged, almost after 4 years of working, without observance of requisite procedure and following the provisions. Again, he was recalled on 10.4.1985, and he met with the same fate, by virtue of the order, dated 30.4.1985, at the mighty hands of the petitioner Board. It is in this context, the poor helpless respondent workman resorted to the provisions of the I D Act for the redressal of his grievance, by way of reference, with a demand that he had completed 240 days services, as required under the law and without any regime or reason or any fault or wrong on his part, and also without any notice or notice pay or retrenchment compensation or allowance, illegally terminated from the service. That was precisely the issue in focus in a reference before the Labour Court.

9. It may also be emphatically mentioned that the respondent workman also contended during the course of process of industrial dispute resolution before the

Labour Court that instead of petitioner employer Board giving him the benefit arising out of the decision manifested in the circular No.446 dated 14.02.1985 of the Board and making him permanent in job, as per the said circular, he came to be retrenched, unceremoniously, or without any legal formality being observed and in flagrant infraction of the terms and conditions of the said circular. His requests to the master for reinstating him in the service of the Board with back wages prior to the date of his illegal termination or the retrenchment in a form of a letter addressed to the master- petitioner Board, not only remained unresponded and unattended but even by not calling him by the board when the new recruitment made by the petitioner board, after 31.4.1985.

10. The petitioner Board, strongly, countenanced the demand of the workman under the I D Act raised by him in a reference by filing a reply, at Exh.9, before the Labour Court interalia contending that he was discharged as he was working for a fixed period. It is also admitted in reply that the respondent workman was working as an Operator with effect from 22.12.1981 till 14.12.1985. The only dispute raised is that his termination or retrenchment was not illegal, as his fixed period expired on 30.4.1985 came to an end and, therefore, he was discharged. So the period during he had worked for 4 years has remained undisputed. The manner and methodology, ample allegations of the respondent workman that it was illegal being in violation of the provisions of the I D Act is undisputed. Again, it is spelt out that he was terminated or retrenched, on 09.12.1984 from the service of petitioner board, where he was working as Operator for 4 years. He was again called and engaged by the petitioner Board in service with effect from 10.4.1985 and again retrenched him on 30.4.1985.

11. It is in this context, it was defended by the petitioner Board that his retrenchment or discharged with effect from 30.4.1984 was on account of fixed tenure and, therefore, he ceased to be in the service. It is also admitted in the reply that thereafter, he was again engaged by the petitioner board for two months. It was therefore pleaded before the Labour Court that he was working as a temporary working charge helper for a fixed period and therefore, it cannot be considered to be retrenchment or any illegal termination. Obviously it is not in dispute that no notice pay was given. Again. it is seriously alleged in the reply that his conduct and working and performance was not satisfactory and since he

was a temporary workman, he was discharged simpliciter.

12. The impugned award recorded by the Labour Court, while resolving the I D Act based upon appreciation of factual profile, examination and evaluation of the documentary evidence, produced at Exh.11 to 19, 29 to 39 and the evidence of the respondent workman, as well as, the evidence of one witness of the petitioner Board Kantilal Nagjibhai Rathod Exh.40, the reply before the Labour Court by the petitioner Board and the evidence of witness of the Board does not even remotely disclose any satisfactory material as to why the entitlement and benefit arising out of the circular No.446 dated 14.2.1985 of the petitioner Board had not been given to the respondent workman, who had worked for 4 years as an Operator. A specific case and demand was made before the Labour Court by the respondent workman that he was entitled to be made permanent, by virtue of the decision manifested in the said circular No.446 dated 14.2.1985 of the petitioner board.

13. It is in this context, the reasoning and ultimate conclusion of the Board could not be successfully assailed. It appears that the petitioner Board has violated the provisions and decision made therein by the Board for making a workman permanent after certain period of service and instead of giving benefit or entitlement of the said circular to the respondent workman or in all probabilities to deny him injudiciously after making retrenchment, after the spell of 4 years, Board engaged him by giving him a separate order in April 1985 and thereafter, for 4 months so as to see that the riggers of the monetary statutory provisions of the I D Act are also made diluted. Nothing has been even remotely suggested as to why a conspicuous silence is observed and maintained with regard to the dispute of employment and rightful benefits arising out of the said circular of the board for making temporary, after a spell of certain years of service.

14. Apart from that, nothing has been successfully shown or spelt out from the record which would even remotely prompt this court to interfere with the impugned award, which came to be recorded for resolution of the industrial dispute after unduly long period of time and which has not crossed more than 18 years and more so, in a writ petition under Article 227 of the Constitution of India, wherein, jurisdictional sweep of this Court, is very much circumscribed.

15. The Constitutional writ jurisdiction and power of

this Court, under Article 227 under which the petition is filed, are supervisory in nature. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or tribunal functions within the limits of its authority.

16. In Mohd. Yunus Vs. Mohd. Mustaqim and ors. reported in AIR 1984 SC 38, the Hon'ble Apex Court has reiterated the proposition of law established that the interpretation of the provisions of Article 227, wherein it has been held that a mere wrong decision, without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction, conferred on the High Courts under Article 227 of the Constitution, is limited only for the purpose of seeing that an inferior Court or Tribunal functions within the limits of its authority. It is not meant to correct an error apparent on the face of the record, much less an error of law. It is further observed that in exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review of reweigh the evidence, upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

17. This settled proposition of law is again reiterated in a three judge Bench decision of the Hon'ble Apex Court rendered in Sadhana Lodh Vs. National Insurance Co. Ltd. and another, (2003) 3 SCC 524, It has been lucidly expounded and avowedly propounded in this decision that supervisory jurisdiction conferred on the High Court, under Article 227 is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. It is further observed in the said decision in exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or a tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or as to correct errors of law in the decision.

18. The only contention raised in this petition is that the impugned award is erroneous and there is error of law by contending that the termination or retrenchment of the respondent workman was not illegal, which is on facts and in the light of the relevant legal settings,

the Labour Court rightly negatived and held that it was illegal retrenchment and, therefore, in the impugned award directed the petitioner board to reinstate the respondent workman without any backwages, in the circumstances of the case, with continuity of service with all benefits.

19. In the opinion of this Court, in this petition under Article 227 of the Constitution of India, the petitioner Board questioning the impugned award of the Labour Court award upon reference the industrial dispute in a reference upon evaluation and analysis of the factual profile of the relevant legal settings is quite justified and cannot be assailed, and in our informed opinion in view of the facts and circumstances emerging from the record, as well as, considering the constitutional provisions of the Article 227 and its parameters for the exercise of power of this Court under the doctrine of judicial review, no case is made out for interference.

20. Petition therefore, is undoubtedly, totally, meritless and since the dispute is dragged on for a long time in the voyage of process of judicial adjudication raised by a poor workman for more than 18 years and, therefore, petition deserves only and only one legal fate of rejection with costs, which is quantified, at Rs.2500/-. Rule is discharged. Interim stay granted obviously shall stand vacated.

[Dr.J.N.BHATT, J]

SNS